

APPENDIX E

PROGRAMMATIC AGREEMENT

BETWEEN

THE BUREAU OF LAND MANAGEMENT

AND

THE WYOMING STATE HISTORIC PRESERVATION OFFICER

REGARDING THE PINEDALE ANTICLINE OIL AND GAS FIELD

EXPLORATION AND DEVELOPMENT PROJECT, SUBLETTE COUNTY, WYOMING

**PROGRAMMATIC AGREEMENT BETWEEN
THE BUREAU OF LAND MANAGEMENT AND THE WYOMING
STATE HISTORIC PRESERVATION OFFICER,
REGARDING THE JONAH II & PINEDALE ANTICLINE NATURAL GAS
FIELDS EXPLORATION AND DEVELOPMENT, WYOMING**

WHEREAS, the United State Department of the Interior, Bureau of Land Management (BLM) has a program which permits, approves, and regulates the management of development projects within public lands; and

WHEREAS, the BLM has determined that exploration and development of the Jonah II and Pinedale Anticline Natural Gas Fields will have an effect upon properties eligible for inclusion within the National Register of Historic Places, and has consulted with the Wyoming State Historic Preservation Officer (SHPO) in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470 et seq. and implemented through the Wyoming Protocol Agreement between BLM and SHPO as subsumed under BLM's national Programmatic Agreement with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers pursuant to 36 CFR Part 800.13 (October 1, 1986); and

WHEREAS, previous identification efforts including consultation with Native American Groups and the Oregon-California Trails Association have identified that significant historic properties, including Lander's Cutoff of the Oregon/California National Historic Trail, and Native American Sacred/Respected Places as well as traditional cultural properties are present within the defined boundaries of the gas field (see Attachment 1) and will be affected by gas field development; and

WHEREAS, the BLM is required to consult with Native American Tribes and others regarding the effects of the proposed gas field development upon resources which are of import to those entities; and

WHEREAS, the BLM has evidenced its commitment to consultation with the Eastern Shoshone, Northern Arapaho, Northern Ute, and Shoshone-Bannock Tribes on this undertaking through the numerous meetings and field visits with Tribal elders as well as the invitation of affected Tribes invited to concur under this Agreement; and

WHEREAS, the BLM has determined that the McMurtry Energy Company, BP-Amoco, Ultra Resources, Yates Petroleum Corporation, Questar Exploration and Production, Anchutz Exploration Corporation, Alpine Gas Co, H.S. Resources, Inc., Jonah Gas Gathering Co., Western Gas Resources, Alberta Energy Co., Williams Field Services, (collectively called the Operators) hold leases or mineral interests within the Jonah II and/or Pinedale Anticline and has consulted with these leaseholders and provided them with an opportunity to become invited parties to this Agreement; and

NOW, THEREFORE, the BLM and the Wyoming SHPO agree that the undertaking shall be implemented in accordance with the following stipulations to take into account the effect of the construction, operation, and maintenance of the Jonah II and Pinedale Anticline Natural Gas Fields on historic properties.

Stipulations

The BLM will ensure that the following measures are carried out.

I. Historic Context Planning Document

The BLM will ensure that a Class I - Existing Data Inventory document (i.e., historic context) is prepared for the Jonah II and Pinedale Anticline Natural Gas Fields study area which is the area of potential effect (APE). A map delimiting the proposed APE is presented in Appendix 1. This document will summarize and synthesize previous work within the prescribed area of the field. This will provide core information for the development of a Management Plan. This document will synthesize ethnohistorical, historical, geophysical, soils, biological, and cultural-historical information currently available. A segment

of this document will discuss Native American consultation efforts which have been conducted under Section 106 and other authorities and describe the results of consultation relative to cultural resource information which can contribute to the Planning Document. The BLM will assure that this document meets the guidance provided in BLM Manual 8110 (as well as portions of the 1988 BLM 8110 Manual outlining necessary elements of Class I - Existing Data Inventory) appropriate sections of the Archaeology and Historic Preservation: the Secretary of the Interior's Standards and Guidelines for the Treatment of Archeological Properties (FR48-190) relating to preservation planning documents/historic contexts.

A. This document shall be reviewed and concurred upon by the Wyoming Historic Context Committee.

B. The planning document will be completed and submitted for review within one year of ratification of this Agreement by the SHPO. Failure to meet this deadline will result in automatic expiration of this Agreement. The parties may choose to re-initiate the Agreement after consultation and amendment

C. Should this Agreement expire as per Stipulation I(B) the BLM will consult on a case-by-case basis on all activities covered by this Agreement pursuant to the most recent version of the Wyoming State Protocol.

II. Research Design/Management Plan

The BLM will ensure that a Research Design /Management Plan is prepared for the Jonah II and Pinedale Anticline Natural Gas Fields study area within six months of finalization of the Historic Context Planning Document.

A. The BLM will submit this document for thirty (30) day review by the SHPO and concurring parties. This document shall be concurred upon by the Wyoming SHPO prior to implementation; concurrence by the concurring parties is recommended but not required for implementation.

B. If an objection is raised by the Wyoming SHPO it will be resolved as per Stipulation IX.

1. Research Design - This portion of the document will detail critical research domains, topics, questions, test implications, confidence intervals necessary to guide research, identification and inventory methods, evaluation procedures, and data recovery within the study area. The BLM will assure that this document will meet the guidance provided in appropriate sections of the Archaeology and Historic Preservation: the Secretary of the Interior's Standards and Guidelines for the Treatment of Archeological Properties (FR48-190). The Research Design will be reviewed and concurred upon by the Wyoming State Historic Preservation Office prior to implementation.

2. Management Plan - This portion of document will detail site use categories, avoidance, monitoring, site protection, and discovery and evaluation procedures to be followed within the study area. Components of the Plan will include management of property types likely to be encountered in the Jonah II and Pinedale Anticline area of effect based on the results of the Historic Context Planning Document and the Research Design. The BLM will assure that this document will meet the guidance provided in BLM Manuals. The Management Plan will establish the overall desired condition for the Jonah II and Pinedale Anticline resource base, including resources which need to be avoided.

III.. Development Prior to Completion of Plans

Until the documents which are listed in Stipulations I and II are completed and accepted by SHPO, the BLM will ensure that historic properties which may be affected by any undertaking are identified and evaluated in accordance with the most recent version of the Wyoming State Protocol, with the following additional procedures:

A. Discoveries

Until which time a final Research Design and Management Plan have been developed for the Jonah II and Pinedale Anticline Natural Gas Fields study area, all discoveries of cultural resources will procedurally adhere to the Discovery Plan referred to in Appendix 2. Lacking this plan, regulations at 36 CFR 800 will be adhered to while managing discoveries.

B. Human Remains

All discoveries of human remains within the Jonah II and Pinedale Anticline Natural Gas Fields study area will procedurally adhere to the Human Remains Plan attached in Appendix 3.

C. Areas of Potential Effect

In defining APEs within the Jonah II and Pinedale Anticline Natural Gas Fields, the appropriate minimum size of APEs for specific types of activities covered in this Agreement will be as follows:

1. Well Locations/Tank Batteries - 10 acres
2. Roads/ Pipelines - Width of construction right-of-way plus 50 foot-wide buffer on either side of the corridor for entire length
3. Other Projects/Facilities - discretion of the BLM cultural resource specialist

IV. Public Education

The BLM will develop a program to promote public education concerning the cultural values within the Jonah II and Pinedale Anticline Gas Field. This program will provide public access to non-protected information regarding the cultural resources of this area. The public education program may include, but not be limited to; interpretive signs, brochures, lecture programs, videos, tours, a web site, and popular history summaries. Parties to this Agreement will be kept informed of progress in this program through receipt of copies of the Annual Report (see Stipulation VI).

V. Annual Report

On or before March 31 of each year, the BLM shall prepare and provide to the SHPO and concurring parties annual report addressing the following topics:

- A. status update of fieldwork
- B. a list of all properties recorded
- C. a list of all historic properties adversely affected
- D. a list of all discoveries and a status report of all related efforts
- E. a discussion of issues and disputes related to the implementation of this Agreement
- F. a list of consultations that occurred with Native American tribes or other interested parties as well as a summary of results
- G. a discussion of public education efforts
- H. recommendations to amend the Agreement if deemed necessary
- I. other information consistent with operations of the Management Plan.

VI. Annual Meeting

Prior to the end of May of each calendar year the BLM and the SHPO shall meet to discuss activities conducted during the previous year as well as to plan for the coming field season. Other affected parties may be invited to attend the annual meeting.

VII. New Lessees

The BLM will invite new lessees/operators within the Jonah II and Pinedale Anticline Gas Field to concur in this Agreement as they become identified.

VIII. Amendment

The SHPO or BLM may request that this Agreement be amended, whereupon they will consult in accordance with 36 CFR Part 800.13 of the pre-1999 regulations to consider such amendment. Amendments will become effective when signed by the

BLM and the SHPO.

IX. Dispute Resolution

All disputes will follow the Dispute Resolution procedures in Section X of the Wyoming Protocol Agreement.

X. Public Objection

Should any member of the public object to any activity pursuant to this Agreement, the BLM will consult with the objecting party to resolve the objection.

XI. Agreement Start

This Agreement shall become effective upon ratification by the BLM and the SHPO. The Agreement will remain in effect for five years from the day following ratification.

Ninety (90) days prior to the end of the term of this Agreement, the parties to the Agreement shall review its terms based on the results of the annual report and other such information regarding its terms as parties deem appropriate. The parties may agree to renew the Agreement to become effective upon the expiration of the Agreement.

XII. Termination

The SHPO or BLM may terminate this Agreement by providing thirty days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the BLM will follow procedures of the Wyoming Protocol Agreement with regard to individual undertakings.

Execution of this Agreement by the Bureau of Land Management and the Wyoming State Historic Preservation Officer, and implementation of its terms, evidence that the Bureau of Land Management has afforded the Wyoming State Historic Preservation Officer an opportunity to comment on the proposed undertaking and its effects upon historic properties, and that the Bureau of Land Management has taken into account the effects of the undertaking on historic properties.

Bureau of Land Management

By: _____ Date: _____

Wyoming State Historic Preservation Officer

By: _____ Date: _____

Concurring Parties:

Northern Arapaho Tribe

By: _____ Date: _____

Eastern Shoshone Tribe

By: _____ Date: _____

Northern Ute Tribe

By: _____ Date: _____

Shoshone Bannock Tribe

By: _____ Date: _____

Oregon-California Trails Association

By: _____ Date: _____

Ultra Resources

By: _____ Date: _____

McMurry Energy Company

By: _____ Date: _____

Alpine Gas Company

By: _____ Date: _____

BP Amoco

By: _____ Date: _____

Anschutz Exploration Corporation

By: _____ Date: _____

HS Resources, Inc.

By: _____ Date: _____

Questar Exploration and Production

By: _____ Date: _____

Yates Petroleum Corporation

By: _____ Date: _____

Western Gas Resources

By: _____ Date: _____

Jonah Gas Gathering Company

By: _____ Date: _____

Alberta Energy Company

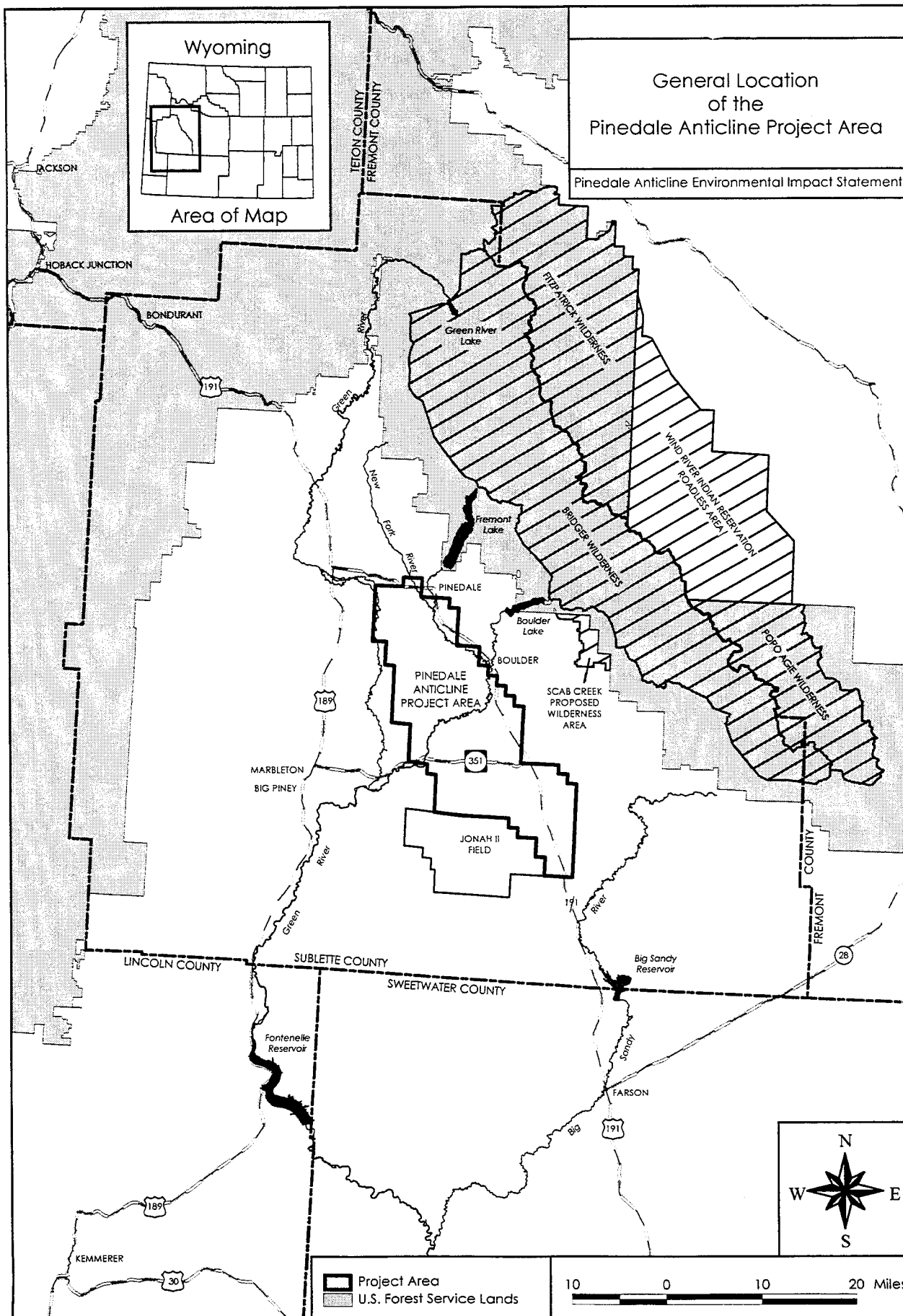
By: _____ Date: _____

Williams Field Services

By: _____ Date: _____

Appendix 1

Jonah II and Pinedale Anticline Natural Gas Field Study Area



Appendix 2

Discovery Plan



IN PROCESS OF PREPARATION

Appendix 3

Human Remains Plan

Human Remains Plan - Jonah II Anticline PA

Upon the discovery of suspected human remains the following procedures will be implemented. Should archaeological techniques need to be employed at any stage of these procedures these must meet all applicable professional standards and be documented in a report or reports which are acceptable to the Bureau and the SHPO.

Discovery Notification:

Whenever any person discovers human remains on BLM land which may be Native American, the law requires the individual to immediately notify the BLM of such discovery. The staff archaeologist and field manager may be notified verbally, but written notification must also be made by the person who knows of the discovery. This will be done within 24 hours of the discovery. Upon notification of the discovery, BLM will take the following steps: (1) Notify the appropriate law enforcement authorities, the coroner and BLM's NAGPRA Coordinator, (2) take immediate further steps to protect the discovery; (3) Determine that indeed the discovery is on BLM lands that the discovery is likely Native American and (4) initiate consultation with the appropriate tribal authorities.

1. Protecting the Remains:

If the discovery occurs in connection with an authorized use, the activity which caused the discovery is to immediately cease and the materials are to be protected until the BLM can respond to the situation. Steps must be taken to secure and protect the remains. Appropriate measures may include posting a guard and/or covering the area with a tarp in adverse weather conditions. In all instances the goal is to prevent deterioration of or further damage to the remains and the area associated with those remains.

2. Notification to Law Enforcement:

The BLM will notify appropriate law enforcement agencies and the SHPO. Law enforcement personnel must be afforded priority to the discovery and determine if they feel criminal investigation is needed or warranted, i.e. the discovery represents a crime scene. Until law enforcement formally releases the scene the discovery location shall be considered a crime scene under the direct supervision of law enforcement personnel. The BLM staff archaeologist can advise law enforcement personnel regarding protection measures and information collection techniques. Upon notification that law enforcement has no further interest in the matter the following procedures are implemented.

3. Assessment of the Remains:

A. BLM will first assess if it does indeed have human remains present. If the coroner or a forensic specialist has been involved in the project as per Step 3 above, it is likely that a determination of sex, race and approximate age of the human remains will have been made. Absent this information the BLM will take appropriate steps necessary to retrieve this basic information. The intent here is to provide information necessary to assess the nature of the remains in a non-destructive fashion.

B. Should the remains be determined through the evidence available to not include Native American skeletal elements, disposition of the remains shall be determined by the BLM in consultation with the SHPO and potential relatives/descendants.

C. Should the remains be determined to include Native American skeletal materials then the BLM will comply with the Native American Graves Protection and Repatriation Act (NAGPRA). The Field Office will notify the BLM Deputy Preservation Officer to assist the Field Office in determining which tribe(s) should be notified of the discovery and determine notification procedures. Appropriate tribal officials should be provided an opportunity to visit the discovery site.

4. **Written Action Plan:** Subsequent to Native American Consultation, any further efforts directed at protecting the discovery in situ, removing the remains from the site and/or repatriating the remains to tribal authorities will be done in

accordance with a written Action Plan. This plan will be prepared or approved by BLM, in consultation with SHPO, and follow procedures and standards established by BLM in compliance with NAGPRA.

5. **Disposition of the Remains:**

The BLM is responsible for the security of the materials until they are transferred to a tribe. Once transfer has occurred, neither BLM nor any other Federal entity or its agents are responsible for the material. If the tribe wishes to have the materials curated, the tribe is responsible for entering into any agreements that may be required by the curatorial facility.

6. **Resumption of Activity:**

Work at the scene may not resume without expressed written permission of the Field Office Manager. This permission can only be given after the a written, binding agreement is executed between the necessary parties that adopts a recovery plan for removal, treatment, and disposition of the human remains or cultural items in accordance with 43 CFR Part 10.4(e).

7. **Decision Record:**

While a transfer of material may or may not take place, in **all cases**, a formal decision must be prepared. The preparation of the decision record and all tribal consultation should be formally documented and retained in the project file by the authorizing field office in cases where transfer does **not** occur and retained in the BLM State Office in cases where transfer **does** occur.